BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Application by Verizon Pennsylvania	)	
Inc., Verizon Long Distance, Verizon	)	CC Docket No. 01-138
Enterprise Solutions, Verizon Global	)	
Networks Inc., and Verizon Select	)	
Services Inc., for Authorization To	)	
Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.
ON VERIZON PENNSYLVANIA'S SECTION 271 APPLICATION

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Sprint Communications Company L.P. ("Sprint") hereby files its comments regarding the above-captioned application of Verizon Pennsylvania for authorization to provide in-region, interLATA services in Pennsylvania ("Application").[1] Verizon's Application fails to comply with Section 271 and cannot be granted at this time.

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[1] Application by Verizon Pennsylvania for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Dkt. No. 01-138 (filed June 21, 2001) ("Application"). Unless otherwise indicated, all materials cited in these comments are contained in the record entitled Consultative Report on Application of Verizon Pennsylvania Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Dkt. No. M-00001435 before the Pennsylvania Public Utility Commission ("PUC"). Where possible, citation to the appropriate record appendix and tab is provided.

I. INTRODUCTION AND SUMMARY

Section 271 requires a BOC to provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. As discussed below, Verizon fails the Section 271 checklist for several reasons. First, Verizon refuses to allow Sprint to interconnect at a single point of interconnection per LATA, as clearly required by the Commission's rules and precedent. Second, instead of allowing CLECs to order interoffice transport facilities at the same time they apply for collocation, Verizon will not accept such orders until two weeks before the collocation site is completed. Where facilities are not available, this practice can needlessly delay a CLEC's roll-out schedule by four or more months. Third, Verizon has refused to apply reciprocal compensation to local calls over existing access trunk facilities and has instead attempted to bill Sprint access charges for these calls. Fourth, Verizon continues to double charge CLECs for collocation power that they do not use. Fifth, Verizon insists that Sprint allow Verizon to collocate its equipment at Sprint's POPs, even though the Commission has expressly held that any attempt to impose ILEC obligations on non-incumbent LECs is inconsistent with the Act.

II. VERIZON FAILS TO COMPLY WITH SECTION 271's COMPETITIVE CHECKLIST.

A. Verizon's Refusal To Allow CLECs To Interconnect At A Single Point Per LATA Violates The Act And The Commission's Rules. (Checklist Item 1)

Section 271 requires a BOC to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i). Section 251(c)(2) requires the incumbent to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Id. § 251(c)(2)(B) and (D). The Commission has concluded that Section 251(c)(2) requires ILECs to allow CLECs to interconnect at a single point of interconnection per

LATA. As discussed below, Verizon refuses to allow CLECs to interconnect at a single point of interconnection per LATA, and therefore, cannot be in compliance with checklist item 1.

The Commission has repeatedly and unequivocally stated that CLECs are entitled to interconnect to an incumbent's network at all technically feasible points, including a single point of interconnection within a LATA.[2] The Commission has explained that this ILEC obligation is critical for achieving the goals of the Act because it "lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic." Local Competition Order ¶ 209. Furthermore, "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."[3] As a result, the Commission has consistently required Section 271

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2 See 47 C.F.R. § 51.321(a) (2000); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 209 (1996) ("Local Competition Order"); Application by SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas, 15 FCC Rcd 18354, ¶ 78 (2000) ("Texas Order"); Joint Application by SBC Communications Inc. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237, ¶¶ 232-35 (2001) ("Kansas/Oklahoma Order"); Application of Verizon New England Inc. For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Dkt. No. 01-9, Memorandum Opinion and Order, ¶ 197 (rel. Apr. 16, 2001) (FCC 01-130) ("Massachusetts Order"); Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, ¶ 112 (rel. Apr. 27, 2001) (FCC 01-132).

3 Massachusetts Order ¶ 197. While Verizon has attempted to define the term "point of interconnection" differently than the term "interconnection point," it is noteworthy that the Commission uses these terms interchangeably. See id. ¶¶ 197-199, 209-12; see also *En Banc* Hearing Tr. at 369-71 (Apr. 26, 2001) (App. B, Tab C, Sub-tab 27) ("4/26/01 Tr."). As Sprint has explained in the proceeding below, Verizon has attempted to distinguish the term "Interconnection Point" from the term "Point of Interconnection" by severing -- via GRIP -- the billing associated with interconnection arrangements from the physical interconnection itself. However, historically the Point of Interconnection has

applicants to prove that they allow CLECs to interconnect at a single point of interconnection per LATA in order to demonstrate compliance with the checklist.[4]

In spite of the clear mandate from the Commission, Verizon continues to stonewall competition in Pennsylvania by insisting on including its Geographically Relevant Interconnection Point ("GRIP") scheme in new interconnection agreements with competitors. GRIP is an interconnection artifice, invented by Verizon, that imposes costs on Verizon's competitors by requiring an interconnecting CLEC to spend additional money to build multiple interconnection points within a LATA or to pay for Verizon's costs of transporting its originating traffic to the CLEC's point of interconnection.[5] For traffic originating on Verizon's network, in the case of a single tandem LATA, Verizon accomplishes this either by requiring the CLEC to (1) collocate at the originating end office; or (2) credit Verizon its charges for transport, tandem switching (if required), and any other charges incurred for transporting the traffic from Verizon's end office to the CLEC. As a result, Verizon is required only to deliver its originating traffic to the end office serving that customer, and not to the CLEC's point of interconnection.[6] In

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been used for both billing and as the physical location for hand-off of traffic. This billing fiction has been created by Verizon to increase CLEC's interconnection costs, while at the same time decreasing Verizon's costs. See Sprint Response to E-mail Request (May 23, 2001) (attached at Appendix A).

4 See Texas Order ¶ 78 ("[A] competitive LEC has the option to interconnect at only one technically feasible point in each LATA."); see also Massachusetts Order ¶ 197; Kansas/Oklahoma Order ¶¶ 232-35.

5 See Sprint Communications Company L.P. and The United Telephone Company of Pennsylvania, Initial Comments at 13-14 (Feb. 12, 2001) ("Sprint Initial Comments") (attached at Appendix B).

6 Verizon has proposed various versions of GRIP throughout its region. The version offered to Sprint, as described above, is called VGRIP -- Virtual Geographically Relevant Interconnection Points -- by Verizon. Other versions do not allow the CLEC the option of crediting Verizon's charges for transport and instead require the CLEC to collocate.

contrast, for traffic originating on the CLEC's network, again in the case of a single tandem LATA, the CLEC must deliver the traffic to either (1) the Verizon end office serving the Verizon terminating customer, or (2) a collocation site at Verizon's end office. This scheme essentially shifts the cost of transport for Verizon's originating traffic to the CLEC, thus requiring the CLEC to bear the costs of transport for both its own and Verizon's originating traffic.[7] Such a requirement impermissibly requires the CLEC to shoulder Verizon's costs of serving its end-user customers, in violation of the Commission's rules.[8]

Moreover, Verizon's actions are inconsistent with the decision of the U.S. District Court of the Middle District of Pennsylvania. In the MCI-Bell Atlantic arbitration proceeding, the PUC reached a more reasonable, but similarly unlawful, resolution to the dispute between the parties regarding points of interconnection. The PUC ordered MCI and Verizon to incorporate terms into their interconnection agreement requiring a single point of interconnection per access

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Still other versions allow Verizon to request that the CLEC collocate, but give the CLEC the right to seek arbitration instead of complying. Verizon has characterized this proposal as a financial choice for the CLEC. Regardless of that characterization, the economics are the same for the CLEC with the end result that Verizon's interconnection scheme impermissibly shifts Verizon's transport costs to the CLEC and in effect precludes the CLEC from interconnecting at a single point per LATA as required by the Commission.

7 See Sprint Initial Comments at 13; see also id., Declaration of Gerald Flurer ¶¶ 8, 9 (Feb. 12, 2001) ("Flurer Decl.") (attached at Appendix B) (explaining that GRIP would force Sprint to be "financially responsible for delivering traffic originated on its network to Interconnection Points at Verizon's end office switches, located deep within Verizon's network, while Verizon would have no reciprocal obligations for the traffic it delivers to Sprint."). The Massachusetts DTE found a similar scheme to be unlawful. See Massachusetts D.T.E. 98-57, Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, Mar. 24, 2000 at 78-79 <http://www.state.ma.us/dpu/telecom/98-57/FinalOrder.htm>.

8 Cf. Local Competition Order ¶ 1062 (recognizing that, for trunking, each carrier should only pay for transport of traffic it originates).

tandem, resulting in more than one point of interconnection in any LATA served by two or more access tandems.[9] On review, the District Court remanded to the PUC with instructions to reform the agreement in accordance with Commission rulings to permit MCI to interconnect with Verizon's network at one point in each LATA.[10] Although an appeal is pending, no stay of the District Court's decision has been granted and it is thus binding law. See 4/26/01 Tr. at 357. Despite this fact, Verizon continues to insist that CLECs acquiesce to its demands for multiple points of interconnection per LATA.[11] Although GRIP requires multiple points of interconnection per tandem, and is thus distinct from the single point of interconnection per tandem requirement that was at issue in the District Court decision, for single tandem LATAs, GRIP in fact imposes *even more onerous* interconnection terms on CLECs than those found

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9 See Joint Application of Bell Atlantic-Pennsylvania, Inc. and Petition of MCIMetro Access Transmission Services for Approval of an Interconnection Agreement Under Section 252(e), A-310236, Folder 00002, Opinion and Order (Sep. 3, 1997) (App. B, Tab O, Sub-tab 11); see also 4/26/01 Tr. at 357.

10 See MCI Telecommunications Corp. v. Bell Atl.-Pa., Inc., Civil No. 1:CV-97-1857 (M.D. Pa. June 30, 2000), at 14-15 (App. B, Tab O, Sub-tab 17). A number of other courts have similarly upheld a CLEC's right to interconnect at a single point of interconnection per LATA. See, e.g., US West Communications v. AT&T Communications of the Pac. Northwest, Inc., No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998) (contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); US W. Communications, Inc., v. Minnesota Pub. Utils. Comm'n, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (same); US W. Communications, Inc., v. Arizona Corp. Comm'n, 46 F. Supp. 2d 1004, 1021 (D. Ariz. 1999) (requiring CLECs to establish a point of interconnection in each local exchange "could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than [the incumbent]"); US W. Communications, Inc. v. AT&T Communications of the Pac. Northwest, Inc., 31 F. Supp. 2d 839, 852 (D. Or. 1998) (same); US W. Communications, Inc. v. MFS Intelenet, Inc., No. C97-222WD, 1998 WL 350588, *4 (W.D. Wa. 1998), aff'd, 193 F.3d 1112, 1124 (9th Cir. 1999) (same).

11 See 4/26/01 Tr. at 363-64 (explaining Verizon's position that it is willing to force a CLEC into arbitration to obtain multiple points of interconnection per LATA in some cases).

unlawful by the court. GRIP plainly runs afoul of the court's mandate that Verizon allow CLECs to interconnect at a single point of interconnection per LATA.[12]

Nor can Verizon finesse its failure by relying on Section 252(i) to meet this checklist item. In prior Section 271 orders, the Commission has held that an applicant has complied with its statutory obligations to interconnect at a single point in a LATA if it has executed at least one interconnection agreement that allows a single point of interconnection per LATA. See Massachusetts Order ¶ 197; Kansas/Oklahoma Order ¶ 232; Texas Order ¶ 78. The Commission reasoned that any requesting carrier would then be able to opt into that provision pursuant to Section 252(i). See Massachusetts Order ¶ 197; Texas Order ¶ 78. In Pennsylvania, not only has the PUC denied carriers their right to interconnect at a single point of interconnection per LATA, but by Verizon's own admission, *there are no interconnection agreements subject to Section 252(i) that are available for carriers to choose that include this provision.* Specifically, in response to a data request by the PUC in the proceeding below, Verizon stated:

> Request: Is there an interconnection agreement that a CLEC can opt into in [Pennsylvania] today that has the one point of interconnection per LATA, the CLEC gets to choose, opt into it?
>
> * * *
>
> Verizon response: There are no interconnection agreements in Verizon-PA that a CLEC can opt into that contain a provision which allows the CLEC to designate a single interconnection point per LATA. Furthermore, the expired MCI agreement contains no such provision either. Rather, the expired Verizon-PA/MCI agreement stipulates that MCI establish at least one interconnection point in each Verizon-PA tandem serving area, as the Commission ordered in the

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12 See id. at 358 ("Verizon has a proposal referred to as GRIPS, geographically relevant interconnection points, which require[s] even more interconnection points than has been required in the MCI case."); Technical Conference Tr. at 102-103 (Mar. 2, 2001) (App. B, Tab C, Sub-tab 12) ("3/2/01 Tr.").

> MCI arbitration. In addition, all Verizon PA interconnection agreements designate multiple Verizon IPs for use by the CLEC.[13]

Although Verizon has assured the PUC that there are agreements available for opt-in that do not contain GRIP, it appears that these agreements require CLECs to interconnect at a single point of interconnection *per tandem* -- not at a single point of interconnection *per LATA* -- as required by the Commission's rules. See Verizon Response to In-Hearing Data Request No. 66 (Mar. 5, 2001) (App. B, Tab D, Sub-tab 10).

As a result of its continued obfuscation of the issue, Verizon has been thus far able to ignore its interconnection obligations without consequence. Verizon has denied CLECs their legal rights to a single point of interconnection per LATA. The local exchange market in Pennsylvania cannot be irreversibly open to competition so long as Verizon is allowed to raise its rivals' costs contrary to federal law. The Commission cannot find that Verizon is in compliance with this item of the competitive checklist.

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[13] See Verizon Response to In-Hearing Data Request No. 64 (Mar. 5, 2001) (App. B, Tab D, Sub-tab 10). Despite this response, the PUC concluded in its Consultative Report that Verizon "has existing interconnection agreements that permit competing carriers to interconnect at a single point on Verizon PA's network." Application by Verizon Pennsylvania for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Dkt. No. 01-138, Consultative Report, PUC at 47 (FCC June 25, 2001) ("PUC Report"). This conclusion likely stems from other contradictory statements made by Verizon that such agreements are available in Pennsylvania. See 4/26/01 Tr. at 360, 364. For example, Verizon has identified the Network Access Solutions and Mpower interconnection agreements as examples of agreements that allow a single point of interconnection per LATA; however, these agreements similarly require the CLEC to either collocate at multiple points in a LATA or to pay for Verizon's costs of transport. See Lacouture-Ruesterholz Decl. ¶ 9 (App. A, Tab A); Network Access Solutions, Inc. Interconnection Agreement, § 4 (June 20, 2000) (App. C, Tab H); MGC Communications, Inc. Interconnection Agreement, § 4 (May 12, 2000) (App. C, Tab G). They do not allow a CLEC to designate a single point of interconnection per LATA. Sprint has been unable to identify any interconnection agreement available for opt-in pursuant to Section 252(i) that does.

B. Verizon's Collocation Process Imposes Unreasonable Costs And Delays On CLECs And Acts As An Impermissible Barrier To Entry That Must Be Removed Prior To Grant Of This Application. (Checklist Items 1, 2 & 5)

As the Commission has recognized, "[t]he provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist." Texas Order ¶ 64. In order to demonstrate compliance with its collocation duties, "a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are 'just, reasonable, and nondiscriminatory' in accordance with section 251(c)(6) and [the Commission's] implementing rules." Id. Verizon currently prohibits a CLEC from ordering transport until roughly two weeks before its collocation arrangement is completed. As discussed below, this practice unreasonably delays collocation, unnecessarily raises CLEC costs, and acts as a barrier to entry in the local market. Until Verizon revises its procedures to allow CLECs to concurrently order transport and collocation, it cannot establish compliance with checklist item 1.

In order to obtain collocation in a Verizon central office, a CLEC must submit an application and the appropriate application fee to Verizon. Upon receipt of an application, Verizon will conduct a site survey to determine if there is adequate space to accommodate the CLEC's collocation request and notify the CLEC if space is available within ten calendar days.[14] If there is space available to accommodate the CLEC's request, and the CLEC wishes to accept the collocation space, it must pre-pay 50% of the non-recurring charges associated with the collocation arrangement within 30 days of receipt of Verizon's proposal for the design and

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[14] See PA PUC Tariff No. 218 § 2.B.3.d. (App. B, Tab BB, Sub-tab 6). Verizon indicates in its Application that it will file a revised collocation tariff by July 9, 2001 incorporating new collocation provisioning intervals. See Lacouture-Ruesterholz Decl. ¶ 57 (App. A, Tab A). Although Sprint has not had an opportunity to review that revised tariff, the interval for physical collocation should remain 90 calendar days. See id.

construction work. See PA PUC Tariff No. 218 § 2.B.4.b. Once the 50% deposit is submitted, a 90 day interval for collocation space construction begins. See id. §§ 2.B.1.h, 2.B.3.c.

Of course, before it can actually use the collocation space to offer service, the CLEC must arrange for transmission facilities to connect the collocation arrangement to its network. Verizon's process for ordering UNE transport that terminates at a collocation arrangement requires the CLEC to specify an "identified termination point" for the requested facility.[15] (This termination point is alternately known as a "connecting facility assignment" ("CFA"), an "actual point of interconnection" ("APOT"), or the "cross connect equipment assignment" ("CCEA"). See Response No. 26.) Specifically, Verizon's transport form (which is also used to order dark fiber, multiplexing, EELs, and DS1 and DS3 loops) contains a *required* field entry for the CFA. See id. According to Verizon's own business rules, the CFA is required when the CLEC is ordering UNEs with a primary or secondary connection to a collocation node. See id. (citing Business Rules at 3-48 to 3-49).[16] Nor is this information within the CLEC's control. The CFA, an alphanumeric code identifying the physical point of termination, or "tie-down assignment" at the collocation node, see Business Rules at 3-48, is generated by Verizon, not the CLEC. Once

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15 See Verizon Response to In-Hearing Data Request No. 26 (Feb. 26, 2001) (App. B, Tab D, Sub-tab 5) ("Response No. 26"). Verizon's business rules provide that the Transport form must be submitted with the Access Service Request ("ASR") form. See Verizon CLEC Handbook: Vol. III, § 7.3: Ordering Process Overview <http://www.bellatlantic.com/wholesale/html/handbooks/clec/volume_3/c3s7_3.htm#TopOfPage> ("CLEC Handbook"); Bell Atlantic Access Service Request (ASR) Business Rules <http://www.bellatlantic.com/wholesale/html/pdfs/BA_ASR_BR_22.pdf> ("Business Rules").

16 CFA information is also required for "N" (new installations or capacity increases) or "C" (change or modification to an existing order) for high capacity facilities. Business Rules at 3-43.

the code is generated, typically two weeks prior to completion of the collocation arrangement, Verizon provides it to the CLEC, who is turn designates the code on the Transport order form.[17]

To the extent that transport is available, the delay in provisioning may be minimal. However, in those cases where transport is not available, the delay can be substantial. As Sprint explained in the proceeding below, it must collocate Digital Subscriber Line Access Multiplexers ("DSLAMs") and other peripheral equipment in order to provide its Integrated On-demand Network ("ION") service offering, which includes local and long distance, voice and data. In collocating in Verizon's central offices in Pennsylvania, Sprint experienced additional delays of up to *120 calendar days* in obtaining transport after the collocation arrangement was otherwise complete. Thompson Decl. ¶ 14.[18] Coupled with the 130 calendar days that it effectively takes to provision the cage itself (*i.e.*, 10 days to survey the site, 30 days to pre-pay plus the 90-day interval, minus two weeks), it has been Sprint's experience that it can take over 235 days -- eight months -- to obtain access to collocation.[19] As the Commission has recognized elsewhere,

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17 See Verizon Comments at 18 & Supplemental Checklist Decl. ¶ 55 (Apr. 18, 2001); see also Sprint Initial Comments, Declaration of Rebecca Thompson ¶ 13 (Feb. 12, 2001) ("Thompson Decl.") (attached at Appendix B).

18 It is not clear whether this delay would be captured in any of Verizon's performance measurements. One likely candidate, however, is PR-8-01 -- % open orders in a hold status > 30 days and PR-8-02 -- % open orders in a hold status > 90 days. See Guerard-Canny-De Vito Decl. ¶ 91 (App. A, Tab D). According to Verizon, "[u]nlike the other performance measurements . . ., which are based on completed orders, these measurements capture the number of orders that are in a hold status, for reasons within Verizon's control, for a certain period of time but are not otherwise reflected in the performance measurements." Id. For interoffice facilities ("IOF"), Verizon reports that 50% of CLEC orders have been on hold for greater than 30 days, and almost 19% have been on hold for over 90 days. See id., Attachment 1 at page 44 (PR-8-01-3530 and PR-8-02-3530). In comparison, only 1.9% and 0.27% of Verizon's IOF orders have been on hold for over 30 and 90 days, respectively. See id.

19 Moreover, because Verizon takes the position that it has no duty to build transport, to the extent that transport that was available when the CLEC ordered collocation subsequently

collocation delays of this magnitude "materially diminish the ability of a competitive LEC to provide the services it seeks to offer because such delay prevents the [CLEC] from responding quickly to the demand for its services in a rapidly changing market."[20]

Other CLECs have experienced similar problems in Pennsylvania. For example, Cavalier faced the same limitations on its ability to order dark fiber facilities from Verizon.[21] Cavalier documented that, in a number of cases, it had ordered collocation augments from Verizon to install fiber panels or fiber termination points to accommodate the use of unbundled dark fiber.[22] However, as with transport, Verizon would not permit Cavalier to order the dark fiber facilities simultaneously with the collocation augment. Instead, Cavalier had to wait until it received the CFA, which would occur about two weeks before collocation work was finished, before it could complete the required fields in the dark fiber order form. See 2/26/01 Tr. at 29. Moreover, as with transport, because an augment often takes a significant amount of time (an average of 114 days for Cavalier), dark fiber that was available at the time Cavalier ordered the augment would often have become unavailable by the time the order was placed. See id. at 81; Cavalier Final Comments at 4. As a result, Cavalier was left with collocation cages that it could

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became unavailable, the CLEC's collocation investment would be completely stranded. See CLEC Handbook, Vol. III, § 2.8: Unbundled Interoffice (IOF) Transport <http://www.bellatlantic.com/wholesale/html/handbooks/clec/volume_3/c3s2_8.htm>.

20 Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696, ¶ 270 (1999) (delays exceeding six months to one year).

21 See Cavalier Telephone Mid-Atlantic, Final Comments at 3-6 (Feb. 12, 2001) ("Cavalier Final Comments") (attached at Appendix C).

22 See Technical Conference Tr. at 28 (Feb. 26, 2001) (App. B, Tab C, Sub-tab 8) ("2/26/01 Tr.").

not economically use because dark fiber was no longer available. See Cavalier Final Comments at 4.

Like Sprint's experience with ordering transport, Cavalier's dark fiber problem stems from Verizon's refusal to accept orders more than two weeks before collocation construction is complete, causing delays and needless expense. In contrast, Verizon routinely assigns dark fiber for its own use eight weeks before the fiber is lit. See 2/26/01 Tr. at 123; Cavalier Final Comments at 4. As demonstrated, Verizon's collocation ordering process imposes unreasonable (and expensive) terms and conditions on CLECs.

Although other ILECs also employ ordering processes that require designation of the CFA/APOT on the ordering form for transport and other UNEs, similar to the process used by Verizon, these carriers have worked around the problem to allow CLECs to place orders so that transport will be available when the collocation cage is completed. Specifically, last September, SBC instituted a new process, the so-called "2 Step Process," that "allow[s] collocated customers the opportunity to order Unbundled Network Elements DS2, OC3, OC3c, OC12, OC12c and dark fiber (when and where available), from collocation to collocation (interoffice), prior to the completion of the construction of the collocation cage."[23] SBC's "fix" essentially allows CLECs to include a temporary designation for the APOT or CFA information, and to follow-up with a supplemental order to add the information once it becomes available.[24] Sprint's own ILEC division similarly embraces parallel processing of collocation and transport orders to ensure transport connectivity within 15 days of cage acceptance.

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[23] See SWBT Accessible Letter No. CLEC00-180, 2 Step Interim Process (Ordering and Provisioning) at 1 (Sept. 20, 2000) ("SBC Letter") (attached at Appendix D).

[24] SBC Letter at 1; see also 3/2/01 Tr. at 141-43 (Thompson testimony) (discussing "fixes" for the APOT problem).

The arguments that Verizon advances as to why it should not be required to fix this problem are unavailing. First, Verizon argues that it already allows Sprint to order facilities two weeks prior to completion of the collocation cage, and that such a policy is entirely reasonable. Verizon Comments at 18 (Apr. 18, 2001) (App. B, Tab B, Sub-tab 2). Yet, where facilities are scarce, as they often are in Verizon's territory, shortening a four month delay by two weeks is a mere drop in the bucket. In the meantime, Sprint's considerable investment, both in equipment and collocation costs -- and its roll-out plans -- are effectively held hostage by Verizon. Second, Verizon argues that to allow Sprint to order facilities more than two weeks in advance would be "tantamount to permitting it to reserve facilities," which would "encourage CLECs to lock up capacity on Verizon PA's network just in case it might be needed later." Id., Supplemental Checklist Decl. ¶ 55. This argument is a red herring. Clearly, it is not reasonable to assume that a CLEC will absorb the time and expense to order a collocation cage and transport facilities to connect that cage merely to "lock up capacity" when the CLEC cannot even access its equipment or use its investment to offer service absent such facilities. Similarly, this issue arises only when new collocation facilities are being built or augmented, not when routine increases to existing capacity are ordered. Further, as discussed above, Verizon's claim that its process for ordering transport is somehow superior to that of other incumbents is simply not credible.[25]

As the Commission has recognized, the "timely provisioning of collocation space is essential to telecommunications carriers' ability to compete effectively."[26] Needless delays between the ordering and provisioning of collocation space constitute barriers to entry that

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[25] 3/2/01 Tr. at 37 (McGuire testimony). In fact, as noted, SBC has introduced a process that allows CLECs to order transport and collocation concurrently, rather than serially.

[26] Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 17806, ¶ 17 (2000).

impose significant competitive harm on new entrants.[27] Verizon's requirement that CLECs serially order collocation and transport unreasonably increases CLEC costs and needlessly delays CLEC entry. Until it permits Sprint and other CLECs to place their transport orders concurrently with their collocation applications, Verizon fails to offer collocation and transport on terms that are just and reasonable and thus cannot satisfy the Section 271 checklist.[28]

C. Verizon Refuses To Comply With The Reciprocal Compensation Requirements Of The Act. (Checklist Item 13)

Verizon has refused to bring itself into compliance with the reciprocal compensation requirements of the Act, and thus cannot demonstrate checklist compliance. See 47 U.S.C. § 271(c)(2)(B)(xiii). Consistent with the procompetitive goals of the Act, Sprint seeks the ability to implement new services that would efficiently use aspects of Sprint's existing access arrangements with Verizon for the provision of local traffic. As explained below, Verizon has precluded Sprint's capturing of these scope economies at the same time Verizon touts its own ability to do so. See Flurer Decl. ¶ 16. It is precisely this type of conduct that the Section 271 process is intended to weed out.

Specifically, Sprint seeks to offer innovative services available through Sprint's operator services platform. A Sprint long distance customer can access Sprint's operator services

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27 Deployment of Wireline Services Offering Advanced Telecommunications Capability, 13 FCC Rcd 24011, ¶ 66 (1998); Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, ¶ 54 (1999); Local Competition Order ¶¶ 558, 559.

28 In its reply, Verizon will no doubt attempt to rely on its last minute promise to conduct a "trial" in Maryland to test out possible solutions to this problem. See 4/26/01 Tr. at 297. This trial has not yet started. As the Commission has held before, paper promises of future action are insufficient to correct deficiencies in a BOC's application for Section 271 relief. See Application of Ameritech Michigan Pursuant to Section 271 To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, ¶ 55 (1997) ("Michigan Order").

platform by dialing "00 minus." The call traverses multi-jurisdictional trunks to reach Sprint's operator services platform. When the call terminates within the same calling area, the call is unambiguously local. A call made to one's next door neighbor by dialing "00 minus" is just as much a local call as a "non-00 minus" dialed call to that neighbor, which could use Verizon's operator services platform or could be direct dialed.[29]

In effect, when the call is terminated within the local service area, the customer is accessing Sprint on a "dial-around" basis for a local call. Because Sprint can add value to the transmission of the call using the Sprint operator services platform, customers may find this dial-around opportunity attractive and useful. Verizon, however, insists on treating *any and all* calls directed through an IXC operator services platform as *access* traffic. 3/15/01 Tr. at 79-84. Verizon maintains that these calls do not qualify for reciprocal compensation charges because both the originating and ending points of the call are carried on the same carrier's network. In asserting this position, Verizon has unlawfully avoided the reciprocal compensation requirements of the Act for local calls.

To be clear, Sprint has not advocated that any long distance or toll call made via the operator services platform should be subject to reciprocal compensation. Sprint seeks to compensate Verizon under reciprocal compensation requirements only those calls associated with operator services that are in fact local. Verizon's blanket refusal to distinguish between interexchange access and local plainly violates the Communications Act, Commission rules and controlling case law. A call is "exchange access" if offered "for the purpose of the origination or

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29 See generally Sprint Initial Comments at 34-37; Flurer Decl. ¶¶ 14-19; Sprint Communications Company L.P. and The United Telephone Company of Pennsylvania, Brief/Final Comments at 31-34 (Apr. 18, 2001) (attached at Appendix F); Technical Conference Tr. at 36-50 (Mar. 15, 2001) (App. B, Tab C, Sub-tab 19) ("3/15/01 Tr.").

termination of telephone toll services." 47 U.S.C. § 153(16). Quite evidently, when 00- is used by customers to make local calls, it is not being used to carry a toll call, and thus the treatment of such calls as "exchange access" is contrary to the Act itself. See also Bell Atl. Tel. Co. v. FCC, 206 F.3d 1 (D.C. Cir. 2000). Consistent with the statute, Section 51.701 of the Commission's rules and regulations provides:

> § 51.701 Scope of transport and termination pricing rules.
>
> a. The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.
>
> *b. Local telecommunications traffic.*
>
> For purposes of this subpart, local telecommunications traffic means:
>
> Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission.[30]

Any attempt to automatically characterize all operator services calls as access traffic at the time the call is delivered to the operator services platform is unlawful because it fails to distinguish between local calls subject to reciprocal compensation charges on the one hand and toll calls subject to access charges. As the Commission explained in its Local Competition Order, the 1996 "Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic." Local Competition Order ¶ 1033.

The PUC dismissed these problems by opining that

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30 47 C.F.R. § 51.701(a)-(b)(1) (2000) (emphasis added).

> the "00-calls" do not appear to be local calls subject to reciprocal compensation. One, even if these calls are terminated in the same area where the call originated, these calls are first funneled through a long-distance operator. Two, these calls are priced at interstate rates as per an interstate tariff.

PUC Report at 234-45. But the mere fact that the calls are so-called "funneled" through a carrier that also has a long distance business certainly cannot transform the call from local to long distance. It would be novel indeed to suggest, for example, that after its acquisition by Deutsche Telekom, all of VoiceStream's domestic wireless traffic henceforth should be viewed as international based upon the identity of that carrier and the predominant nature of its business. Moreover, the fact that Sprint's facilities may be used to carry both local and toll traffic does not relieve Verizon of its obligation to establish reciprocal compensation rates for those calls which are local. Further, the rate charged by the carrier cannot determine the jurisdictional nature of the call. Moreover, Sprint has sought reciprocal compensation for such calls on a forward-looking basis for the introduction of new services that may well be priced altogether differently from the current charges for operator assisted calls.

In any event, the Commission is obligated to render its own explication of the statute. Based on unambiguous facts developed in the state record, Verizon refuses to provide reciprocal compensation arrangements for local calls placed through Sprint's operator services platform. Section 271(c)(2)(B)(xiii) requires that Verizon provide reciprocal compensation arrangements in accordance with Section 252(d) of the Act. Verizon has not therefore satisfied this checklist item.

D. Verizon Does Not Provide Collocation At Rates Or Terms That Are Reasonable Or Cost-Based, In Violation Of Section 271 Of The Act. (Checklist Item 1)

In carrying out its responsibilities to administer Section 271, "the Commission has determined that prices for interconnection . . . must be based on an incumbent LEC's forward-

looking, long-run incremental costs for each network element."[31] Although the Commission can look to the state commission's findings below for guidance, "[t]he Act vests in the Commission the *exclusive responsibility* for determining whether a BOC . . . has priced interconnection . . . in accordance with the pricing requirements set forth in section 252(d) and, therefore, whether the BOC has fully implemented the competitive checklist." Michigan Order ¶ 282 (emphasis added). As discussed below, Verizon fails to offer CLECs collocation on rates, terms and conditions that are just, reasonable, and cost-based. As a result, Verizon fails checklist item 1.

As noted, in order to offer ION, Sprint must collocate equipment at Verizon's facilities. To operate this equipment, Sprint must order DC power from Verizon. Like most other CLECs, Sprint requests two electric conduits, or "power feeds," to deliver power from the fuse panel in its cage to the collocated equipment.[32] One feed is known as the primary, or A-feed, and the other as the back-up, or B-feed. See Covad Final Comments at 4 & n.5. The purpose of ordering two feeds is to ensure a continuous flow of power if a fuse "blows" or one of the feeds otherwise becomes inoperable. See id. at 4. Thus, each feed must be able to carry a maximum

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31 Applications by Bell Atlantic-New York for Authorization Under Section 271 to Provide In-Region, InterLATA Service, 15 FCC Rcd 3953, ¶ 237 (1999), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000). Although the Eighth Circuit vacated the Commission's TELRIC rules, that decision is currently before the Supreme Court. Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), cert. granted sub nom. Verizon Communications v. FCC, 121 S. Ct. 877 (2001); see also Iowa Utils. Bd. v. FCC, No. 96-3321, Mot. for Partial Stay of Mandate (8th Cir. Sept. 22, 2000) (staying ruling pending review by Supreme Court).

32 See Final Comments of Covad Communications Company at 4 n.5 (Apr. 18, 2001) ("Covad Final Comments") (attached at Appendix G); see also *Ex Parte* letter from Conversent Communications to Magalie R. Salas, CC Dkt. No. 98-147 (March 6, 2001) ("Conversent *Ex Parte*").

capacity equal to the amount of power that the attached collocated equipment is expected to use, or "drain." See id. at 4 n.5.[33]

Rather than charge Sprint for the amount of power that it actually drains, Verizon instead doubles that charge by charging Sprint for power *per feed.* In order to understand why this is improper, an example is helpful. Assume that the maximum amount of power that Sprint's equipment can drain is 40 amps. Sprint will order -- consistent with standard industry practice and, until recently, Verizon's collocation application -- 40 amps of power for both the A- and B-feeds.[34] Although both feeds have the *capacity* to each draw 40 amps, the equipment will not drain more than 40 amps. This additional capacity is simply a redundancy feature designed to ensure that, should one of the feeds fail, the other feed will be able to deliver 40 amps to the collocated equipment and prevent a service interruption.[35]

To ensure that 40 amps of power will be available if one of the feeds malfunctions, Sprint thus must order 40 amps for each feed. Under no circumstances, however, will the equipment

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33 "Drain" refers to the amount of power that a piece of equipment can actually use.

34 See *En Banc* Hearing Tr. at 43 (Apr. 25, 2001) (App. B, Tab C, Sub-tab 26) ("Verizon indicates that it is an industry standard for CLECs to request two feeds for their collocation arrangements.") (statement of PUC staff). Although Verizon has attempted to argue that CLECs were always free to order a single feed, see Lacouture-Ruesterholz Decl. ¶ 81, its previous collocation application, which required CLECs to order power in increments of an "A&B feed pair," belies those claims. See Verizon Collocation Application, § IV (12/01/00) (attached at Appendix E); see also id. ("When indicating the number of amps drain per feed, a quantity of '30' equals 30 amps on A and 30 amps on B. DO NOT ADD TOGETHER."); Covad Final Comments at 4 n.5.

35 Verizon has argued that it is proper to charge per feed because, according to its own (unverified) testing, 81% of CLECs draw power from both feeds. Lacouture-Ruesterholz Decl. ¶ 83. However, depending on the type of equipment, the feeds will either each "load share," *i.e.*, carry only half the power used (in the 40 amp example, 20 amps on each feed), or the A-feed will carry 100% of the power used, while the B-feed carries 0% (unless a problem with the A-feed should arise). See Conversent *Ex Parte* at 7.

draw more than 40 amps of power. Despite this fact, Verizon's current state collocation tariff authorizes it to charge Sprint and other CLECs for power *per feed*. In this example, Sprint would pay for 80 amps of power even though it never draws more than 40 amps. Nor it this amount insubstantial. For Sprint, which has roughly 90 collocation sites in Pennsylvania, at $19.56 per amp, the extra charge per month is over $70,000. Over the course of a year, the overcharge is almost $850,000.

In response to this problem, Verizon has proposed revisions to its Pennsylvania collocation tariff that appear to preclude it from double charging CLECs for collocation power.[36] Although these revisions were initially scheduled to become effective in May 2001, they have since been suspended by the PUC for a period not to exceed six months, or until November 20, 2001.[37] Even assuming that the proposed revisions correcting the redundant power charge ultimately become effective, however, what Verizon gives with one hand, it takes away with the other. Specifically, although the proposed revisions remove the language that Verizon apparently relies upon to double-charge CLECs, Verizon substitutes other, potentially more

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36 See Proposed Revisions to Verizon Pennsylvania PUC Tariff No. 218, Section 2, Original Sheets 22A-22C (issued Apr. 11, 2001) <http://www.bellatlantic.com/tariffs_info/intra/pendtar/pa/pdf/power.pdf>. Verizon has also issued an Industry Letter that it claims has resolved this issue. Lacouture-Ruesterholz Decl. ¶ 84 (citing Attachment 12). Although that letter states that Verizon will charge CLECs in Pennsylvania for the total number of load amps ordered, it also states that "Verizon East will provision and bill DC Power applications in accordance with the prevailing tariff terms, conditions, and rates in effect." Id., Attachment 12 at 2. The "prevailing tariff terms, conditions, and rates in effect" in Pennsylvania today allow Verizon to double charge for back-up power.

37 See Pennsylvania PUC v. Verizon Pennsylvania, Dkt. No. R-00016329, Order at 4 (PAPUC May 24, 2001); see also Verizon Pennsylvania Pending Tariff <http://www.bellatlantic.com/tariffs_info/intra/pendtar/pa/html/index.htm>.

onerous, provisions that allow it to unilaterally impose substantial penalties on CLECs.[38] For example, as another BOC pointed out when opposing identical language at the federal level, under Verizon's proposed penalties, a 5 amp overdraw for ten seconds in a single collocation site could result in a $10,000 penalty.[39]

As the Commission has recognized, access to collocation at cost-based rates and on reasonable terms and conditions is critical to true facilities-based competition. As demonstrated, Sprint and other CLECs are currently being forced to pay for twice as much power as they actually use.[40] Verizon's practice of double charging for power also impedes CLECs from entering local markets that they could otherwise (with cost-based rates) efficiently enter. The question of whether current and future prices for interconnection permit efficient entry or effective competition is critical in determining compliance with Section 271's checklist.[41] Under either its current or proposed tariff, Verizon fails to meet Section 271's requirement that it offer CLECs access to collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

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38 For a general discussion of why those terms are unlawful, see Sprint's Petition to Reject or Suspend and Investigate Verizon Revisions to Tariff FCC Nos. 1 and 11, Transmittal No. 1373, at 6-8 (FCC Apr. 18, 2001).

39 See Qwest Petition for Suspension or Rejection of Revisions to Verizon Communications Tariff FCC Nos. 1 and 11, Transmittal No. 1373, at 6 (FCC Apr. 18, 2001).

40 Even this amount understates the effect of Verizon's anticompetitive conduct, as it does not include overcharges due to other Verizon practices, such as charging CLECs for power before their power source is activated.

41 See, e.g., Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd 539, ¶ 36 (1997).